

Notice of Allowability

Application No.

10/826,866

Examiner

Matthew J. Kasztejna

Applicant(s)

GOMEZ, RICARDO ALEXANDER

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6/22/07.
2. ☒ The allowed claim(s) is/are 5,6,8-18,20-22 and 25.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL:

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Election/Restrictions

Claims 1-4, 23-24 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 22, 2007.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Daniel Mackas on August 21, 2007.

The application has been amended as follows:

Claims 1-4, 23-24 and 26 are **cancelled**.

The following is an examiner's statement of reasons for allowance: The prior art does not teach or fairly suggest the apparatus and method as recited in claims 5-6, 8-18, 20-22 and 25 of the instant invention comprising, *inter alia* a sterilized endoscopic scope defogger comprising a casing having sidewalls defining a plurality of sidewall chambers and a central chamber, an outer surface of the casing defining an inlet of a cavity communicating with the central chamber to allow a surgical scope to be inserted

into the central chamber through the inlet of the cavity; exothermic reactive chemicals including a catalyst disposed within the sidewall chambers; a defogging solution disposed within the central chamber and to be heated by the exothermic reactive chemicals, and wherein the sidewall chambers are configured to be breathable to create a sustained exothermic reaction in order to heat a surgical scope submerged in and heated via the heated defogging solution; and the cavity being self-sealing and configured to allow a surgical scope to be inserted through the inlet of the cavity and to be submerged in and heated via the defogging solution, and to prevent the defogging solution from spilling out of the inlet of the cavity.

Beane et al. (U.S. Patent Application Publication No. 2002/0022762) teach a warming and cleaning device 110 for a laparoscope 10 comprised of a housing 112, a heat-conducting tube 114, a sponge 116, a container or bottle 118 and a heating element, such as a heating pad 120 (see Figures 2A to 5F). Bottle 18 is filled with a solution that can contain an antifogging solution and when the surgeon squeezes bottle 118, the bottle dispenses the solution to moisten sponge 116 (see page 3, section 0056). The heating pad 120 includes an outer pad 146 that encases a chemical mixture that, when activated, generates an exothermic reaction (see page 3, section 0057). Pad 120 is wrapped around the tube 114 inside of housing 12 (see Figure 2A). In operation, the distal portion 16 of laparoscope 10 is inserted through opening 240 until the lens portion 14 abuts sponge 216, so that the lens portion 14 is cleaned and defogged and the laparoscope 10 is warmed (see page 4, section 0070). The housing 112 can be made from a hard plastic, which would make is shock absorbent (see page 4, section

0061). A wiping compartment 312 is provided in an alternate embodiment and a hook and loop assembly 180 can be used to attach the device to an operating table (see page 4, section 0066). Beane et al. are silent with respect to wherein the apparatus includes breachable membranes separating chambers containing reactants configured such that when the membranes are breached permit the reactants to mix and generate a sustained exothermic reaction for heating a defogging solution and a scope when submerged in the defogging solution. Furthermore, Beane et al. fail to disclose wherein the apparatus includes breachable membranes separating chambers containing reactants configured such that when the membranes are breached permit the reactant to mix and generate a sustained exothermic reaction for heating a defogging solution and a scope when *submerged* in the defogging solution, as is generally recited in independent claims 5, 16-18, 20-22 and 25. .

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

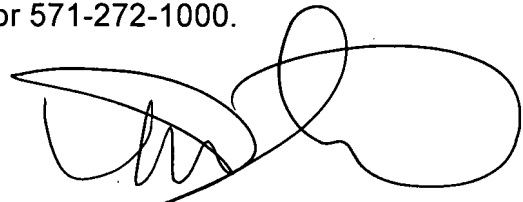
Art Unit: 3739

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *MLK*

8/21/07



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700